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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Phyllis J. Hamilton, Judge

VLADI ZAKINOV, INDIVIDUALLY)
AND ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)
Plaintiffs,)
VS.) NO. CV 18-06753-PJH
RIPPLE LABS, INC., ET AL.,)
Defendants.)

)

Oakland, California
Wednesday, February 13, 2019

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued on the following page)

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1 Wednesday - February 13, 2019

12:39 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling CV 18-6753, Zakinov, et al. vs.
5 Ripple Labs, Inc., et al.

6 Counsel, please step forward and state your appearances.

7 **MR. ODDO:** Good morning, Your Honor. Stephen Oddo
8 from Robbins Arroyo on behalf of plaintiffs Zakinov and Oconer.

9 **THE COURT:** All right. Good morning.

10 **MR. LAUGHLIN:** Good morning, Your Honor -- or
11 afternoon. Good afternoon.

12 **THE COURT:** Morning. It's morning. Still morning.

13 **MR. LAUGHLIN:** Tom Laughlin from Scott + Scott on
14 behalf of Plaintiff Greenwald.

15 **THE COURT:** All right. Good morning.

16 **MR. O'MARA:** Good morning, Your Honor. Brian O'Mara
17 on behalf of the state law plaintiffs, Zakinov and Oconer.

18 **THE COURT:** All right. Good morning.

19 **MR. MORRISON:** Good morning, Your Honor. Peter
20 Morrison with Skadden Arps on behalf of defendants.

21 **THE COURT:** All right. Now, this matter is on for
22 hearing on the two motions to remand that have been filed.

23 Is one of you going to take the lead on this?

24 **MR. O'MARA:** I think I'll be the guy.

25 **THE COURT:** Okay. And you are?

1 **MR. O'MARA:** Brian O'Mara.

2 **THE COURT:** O'Mara. Okay. All right. It's your
3 motion then.

4 **MR. O'MARA:** Okay, Your Honor. I think it's been
5 fully briefed by both sets of plaintiffs. And maybe I could
6 just -- if I could just cut to the chase, and we'll kind of get
7 to the meat of it.

8 I think I would like to focus on two aspects of this, and
9 one is the voluntarily/involuntary rule and then the other one
10 is actually the stipulation and Consolidation Order itself.

11 And kind of no matter how you cut it, it leads to the
12 conclusion that these matters are not removable. There is no
13 basis for removal.

14 So let's start with the voluntarily/involuntary rule.

15 **THE COURT:** Wait a minute. They're removable if they
16 are consolidated, aren't they?

17 **MR. O'MARA:** No, Your Honor. And that's the second
18 part when we get to the consolidation. It doesn't matter
19 essentially if it was consolidated properly or not. And you
20 may -- maybe I'll start with that to begin with, if that's
21 where Your Honor is focused.

22 Mr., I guess, Ripple of the Ripple defendants, they focus
23 on the terms of the first Consolidation Order and says that if
24 there is another -- if the action party shall bring that to the
25 attention of the court for the purposes of consolidating it

1 with it.

2 But the first Consolidation Order also provides that the
3 Zakinov and Oconer plaintiffs would, when they were
4 consolidated -- and at the time that the stipulation was
5 entered and the order was entered consolidating those two
6 cases, Greenwald was up here before Your Honor. It had already
7 been removed and then was shortly thereafter remanded.

8 But at that time, that consolidation stipulation and order
9 provided that the state law plaintiffs could either identify an
10 operative Complaint or file a Consolidated Complaint and that
11 Complaint would be the operative Complaint.

12 So on October 15th, we went forward and we filed the state
13 law operative Complaint. We can all agree, as Mr. Morrison did
14 in his brief, that that Complaint on October 15th was not
15 removable. It was state law claims on behalf of a state law
16 class. And by operation of the stipulation, that becomes the
17 operative Complaint.

18 So if -- assuming that Greenwald was properly consolidated
19 in, by operation of that stipulation, that operative Complaint
20 supersedes the Greenwald Complaint and any other Complaint for
21 an action that was consolidated into the state law --

22 **THE COURT:** So what happens to Greenwald? Is he --

23 **MR. O'MARA:** There's nothing there right now,
24 Your Honor.

25 **THE COURT:** Is he dismissed? Are the federal claims

1 that Greenwald brought -- are they just all dismissed?

2 **MR. O'MARA:** And that's the next step because we were
3 on the phone actually. We had a conference call with
4 defendants -- I believe it was like November 7th -- to prepare
5 for a Case Management Conference in front of Judge Dubois, and
6 this was raised. And we asked Mr. Morrison, *Hey, let's hold*
7 *off on this. Let's talk to the judge and see what he has in*
8 *mind, and we'll get to the bottom of this,* because the next
9 step would have been for the parties to determine whether or
10 not they wanted to continue to proceed based on that operative
11 state law Complaint, which supersedes all other Complaints, or
12 whether they wanted to go ahead and amend the Complaint to add
13 other claims or parties or whatever it may be.

14 But it's clear from that -- from that Consolidation Order
15 that if Greenwald was consolidated in, that that Complaint had
16 been superseded by the existing October 15th operative
17 Complaint.

18 So that's where we are. There is no -- there is only one
19 Complaint here because the Greenwald Complaint has been
20 superseded. The only Complainant that's before Your Honor to
21 determine removal jurisdiction is the October 15th, 2018
22 Complaint --

23 **THE COURT:** And it would be inappropriate for the
24 Court to consider the Greenwald Complaint in conjunction with
25 the operative Complaint in making a determination?

1 **MR. O'MARA:** Well, it's not before Your Honor. The
2 Consolidation Order that Mr. Morrison contends creates the
3 basis for removal jurisdiction also provides that that
4 Greenwald Complaint has been superseded.

5 The next step would have been the plaintiffs --

6 **THE COURT:** Are you talking about the second
7 Consolidation Order? The October 31st, 2018 order?

8 **MR. O'MARA:** Right. And that's the other point
9 because Mr. Morrison says *Well, it really doesn't matter the*
10 *voluntarily/involuntary aspect because courts can sua sponte*
11 *consolidate cases*, but Judge Dubois did not do that. In his
12 second Consolidation Order, he specifically says, *Pursuant to*
13 *the first contesting order I'm going to consolidate Greenwald*
14 *into the In Re Ripple Labs state law case*. So --

15 **THE COURT:** And he didn't do that?

16 **MR. O'MARA:** No -- well, he did do that, but he
17 made -- he made it clear that that consolidation was pursuant
18 to the first consolidation order. The first consolidation
19 order provided that any Complaint for an action that was
20 consolidated into this state law case would be superseded by
21 the Complaint that plaintiffs filed on October 15th.

22 So whether a consolidation was proper or not, there is
23 only one Complaint in front of Your Honor and that's the state
24 law case that was filed on October 15th.

25 **THE COURT:** Okay. So does Greenwald agree that the --

1 his Complaint is no longer operative and shouldn't be
2 considered? It seems to me if there is agreement, then it's
3 pretty easy. You just dismiss the federal claims and you can
4 stay there.

5 **MR. LAUGHLIN:** Stay in state court?

6 **THE COURT:** In state court.

7 **MR. LAUGHLIN:** Well, we think if, in fact, this Court
8 were to deny remand -- and I don't think -- I think it should
9 remand for all the reasons we've stated in our papers -- we
10 would properly dismiss and go back to state court because
11 what's going on, in our view, is really we -- as the master of
12 our Complaint, we have chosen to file in state court. Ripple
13 has already removed us one time contrary to controlling Ninth
14 Circuit law, and the Court decided that we should have been
15 remanded back.

16 After we were remanded, within a few days, we were
17 consolidated. We believe the court probably overlooked -- was
18 not aware of the fact that there were differences between our
19 two cases. And then before that issue could be brought to the
20 judge in California state court, Ripple removed us, bringing us
21 up here, really in a way that has, in our view, been wasteful
22 of time and resources and doesn't make a lot of sense.

23 But if -- so we are pursuing the remand now because it
24 seems as though it might be the fastest way to get the cases
25 back down in front of Judge Dubois.

1 **THE COURT:** Maybe not.

2 **MR. LAUGHLIN:** Maybe not. But I just -- if I could
3 just point the Court to what -- really what I think is the key
4 paragraph here, which is paragraph 8 of the first Consolidation
5 Order, which was the stipulation entered in the state court
6 action.

7 What it provides, I think, is a point of law that is
8 determinative here which is, you know -- my colleague has
9 already pointed out. It says that, "If filed, the Consolidated
10 Complaint shall be operative and shall supersede all complaints
11 filed in any of the actions consolidated herein." And
12 supersede is --

13 **THE COURT:** But "herein" means cases already filed.

14 **MR. LAUGHLIN:** Well, this Consolidation Order also
15 contemplates cases being remanded -- it references cases that
16 might be remanded herein and contemplates --

17 **THE COURT:** Wait, wait, wait. You're losing me.

18 It says, "It shall supersede all Complaints filed in any
19 of the actions consolidated herein." Those are cases
20 already -- it doesn't, in my view, say anything about what
21 happens in future cases.

22 I sign consolidation orders all the time, and we always
23 include a reference to if any new cases are filed, then they
24 shall comply with this order. Does it say that in this order
25 anywhere?

1 **MR. LAUGHLIN:** I would point the Court to paragraph
2 14: "This order shall apply to each case arising out of the
3 same or similar transactions and/or events as related actions
4 which is currently pending in, subsequently filed in, or
5 remanded to," thus us, "or transferred to this Court."

6 **THE COURT:** Okay.

7 **MR. LAUGHLIN:** So I view this first Consolidation
8 Order as what the Court is familiar with, a standard order that
9 creates a leadership structure over all types -- one type of
10 case --

11 **THE COURT:** Right.

12 **MR. LAUGHLIN:** -- and appointed my colleague or
13 counsel for the state law plaintiffs as lead there.

14 **THE COURT:** What does that mean, though, as a
15 practical matter? Your case was remanded because it had
16 federal claims.

17 **MR. LAUGHLIN:** Uh-huh.

18 **THE COURT:** If, indeed, it is consolidated into this
19 Consolidated Complaint, the Consolidated Complaint only asserts
20 state law claims. So are you dismissing -- do you think by
21 operation of this order, the federal claims are automatically
22 dismissed, in which case your client doesn't have a case.

23 **MR. LAUGHLIN:** So I believe that is the only way to
24 read this order, which is why I think that what happened --
25 our -- my overall -- our position is that the first

1 consolidation -- that the consolidation of Greenwald post
2 remand was likely in error or was not fully considered by the
3 court. If I were to read this order literally on its face, I
4 don't see any other way to interpret it other than to --

5 **THE COURT:** Was Greenwald filed in state court to
6 begin with?

7 **MR. LAUGHLIN:** Yes.

8 **THE COURT:** So why would you file a case in state
9 court that only pled federal Securities Act claims if you
10 didn't want to be -- well, *Luther* would apply then to your
11 case.

12 **MR. LAUGHLIN:** Yes.

13 **THE COURT:** Okay. But if it's consolidated pursuant
14 to this Consolidation Order and you're taking the position that
15 this controls, there can be no federal claims.

16 **MR. LAUGHLIN:** So our view is -- our plan is to move
17 to de-consolidate upon remand. So this -- we had -- had we
18 stayed in front of Judge Dubois for a few days and been able to
19 contact him, we would have informed him of our view that his
20 order overlooked important distinctions between the two cases.

21 **THE COURT:** But didn't you have an opportunity to
22 oppose the consolidation and you didn't do it?

23 **MR. LAUGHLIN:** We did not, Your Honor, because there
24 was no motion to consolidate. What happened -- and I think
25 some of this may stem from the inartful drafting of an order

1 that we were not a part of.

2 **THE COURT:** But there was a Notice of Related Case.

3 **MR. LAUGHLIN:** Yes.

4 **THE COURT:** And there was five days, and you didn't
5 oppose the case being related.

6 **MR. LAUGHLIN:** I don't think I -- yes, that's correct,
7 because it is related. In a general sense, it is related.

8 **THE COURT:** So you just didn't anticipate that he
9 would *sua sponte* --

10 **MR. LAUGHLIN:** *Sua sponte*, because -- and I harken
11 back to in federal court "relation" is actually a liberal and
12 broad term that includes cases where there are similar or
13 overlapping facts, and I do not deny that there are overlapping
14 facts, but what I do think is I think undeniable at this point
15 would be that consolidation with the state law plaintiffs would
16 be prejudicial to my client for the reason the Court has just
17 identified, which is that they don't want to assert our claims.

18 So how can they be lead -- how could our cases proceed
19 together in the same Complaint when they have chosen -- and I
20 think it's their right to choose -- a strategy, a specific
21 strategy and a specific class.

22 **THE COURT:** Okay. So you're talking about, though,
23 something that would happen in the future. You would ask the
24 judge to de-consolidate. But the cases are now consolidated
25 and they are here in this court. So what is it that you think

1 that I should do and what's the authority for doing so?

2 **MR. LAUGHLIN:** So the -- I think the cleanest, easiest
3 way in which -- is, one, CAFA jurisdiction is based on the four
4 corners of the Complaint. In terms of -- what Ripple has
5 pointed to is certain case law that says, *Well, if we're*
6 *constructing this de novo and we don't know what effect*
7 *consolidation has, we might look to the common law of the state*
8 *from which the case was removed.* They have cited to a few
9 district court opinions on that.

10 But in our -- but following that logic, what the Court
11 should do is look to what Judge Dubois actually said the effect
12 of consolidation would be other in his case, which is clear,
13 and it's set forth in paragraph 8. So if the Court were just
14 simply to apply California state law regarding the intent and
15 the effect of consolidation, then the Court should rule that
16 the consolidation had the effect of superseding Greenwald's
17 Complaint and leaving just the state law Complaint, and
18 therefore that Complaint, since it clearly, by all accounts, is
19 not removable, remand is therefore proper.

20 That's, I think, the first, sort of, straightforward --
21 and to avoid that outcome, I think you would have to say, *Well,*
22 *when Judge Dubois said "supersede," he didn't really mean*
23 *supersede.* But I don't really see any basis to impose that
24 view on this order here. One, because the plain language says
25 it; and, two, because that's generally the way these

1 consolidation orders work, in my experience, which is that the
2 point of this would not be to allow subsequent filers to come
3 in and dislodge the operative Complaint that the state law
4 plaintiffs have had -- had filed, but simply to allow the state
5 law plaintiffs to proceed on their operative Complaint and
6 allow defendants to move to dismiss it.

7 And my interpretation of that is not only supported by
8 paragraphs 8 and 14, but if you read the overall paragraphs 9,
9 10, 11, 12, 13, this order vests the state law plaintiffs with
10 control over what's going to be alleged, the strategy, what --
11 how to speak on behalf of plaintiffs.

12 **THE COURT:** Now, if you are correct that the operative
13 Complaint, the Consolidated Complaint, controls even the
14 subsequently-filed actions, and the subsequently-consolidated
15 actions includes your clients case -- right?

16 **MR. LAUGHLIN:** Uh-huh.

17 **THE COURT:** What does that mean, though, in terms of
18 what was removed? Your clients case -- didn't it disappear
19 upon being consolidated?

20 **MR. LAUGHLIN:** Yes.

21 **THE COURT:** So how do I -- I mean, if your argument is
22 correct and I'm not to look at the two Complaints in
23 conjunction, but I'm supposed to only look at the Consolidated
24 Complaint, what was removed was only the state law claims. Are
25 you saying that the federal claims extinguished upon the

1 consolidation of your case with the prior two cases?

2 **MR. LAUGHLIN:** Yes. I think there is no other way to
3 interpret the effect of Judge Dubois' order.

4 **THE COURT:** If that's true, then what was removed was
5 purely state law claims for which CAFA jurisdiction would not
6 lie.

7 **MR. ODDO:** That's correct, Your Honor.

8 **THE COURT:** Because it's a California class; right?

9 **MR. ODDO:** That is correct, Your Honor. If I could
10 make one point. And this is why I believe the
11 voluntarily/involuntary aspect of it is important is because we
12 had this conversation -- we had a conversation with
13 Mr. Morrison right before he went forward and filed this Notice
14 of Removal and we were trying to get him to -- *hey, let's go*
15 *see the judge.* We had a Case Management Conference a little
16 over a week later. We wanted to go see the judge, find out
17 what he wanted to do, and then we could take the next steps to
18 figure out how we wanted to proceed, and that would have been
19 the voluntarily step, was when we went in front of Judge Dubois
20 and we said *Okay, this is how we want to proceed.*

21 If we would have taken the voluntarily step of combining
22 those claims into one Complaint, as contemplated by the
23 Consolidation Order, then that would have provided some removal
24 jurisdiction, but that didn't happen.

25 **THE COURT:** I'm not persuaded this whole voluntarily

1 step issue is necessarily warranted. I am not sure I have to
2 make that finding in this case.

3 But I am concerned about what the intent of all the
4 parties are. I've got these three parties and a judge who has
5 issued several orders and it all seems to be sort of a mess, to
6 me.

7 **MR. LAUGHLIN:** Well, on the day that Ripple removed
8 us, I had -- I had informed Ripple that we had planned to move
9 to de-consolidate.

10 Our intention, if the Court grants the motion to remand,
11 is to go back to Judge Dubois, move to de-consolidate on
12 grounds I'm quite confident he would grant. But if for some
13 reason if he denies our motion and he makes clear what his
14 reasoning is, we could decide that then.

15 But what's happened, and I think it's unfortunate, is
16 Ripple is short-circuiting that process in front of state court
17 and preventing state court from making these type of
18 determinations that would allow for the efficient process of
19 this case.

20 So that -- so, you know, really I see the root of the
21 problem being the premature removal of the action and that --
22 hope that this Court would somehow see chaos, I suppose, which
23 is my initial reaction to being removed a second time within
24 three weeks, and try to -- or potentially be persuaded the case
25 should be seen together when, in fact, that's not -- I don't

1 see a basis in the state court's own rulings on that and I
2 also -- you know, the Court has said it is not persuaded by the
3 voluntarily/involuntary, but the general underlying principle
4 behind CAFA is that it's a jurisdiction that plaintiffs choose,
5 not something that is foisted on us.

6 And I think it's really clear in this case that we have
7 chosen -- Greenwald has chosen state court, and so the state
8 law plaintiffs have also chosen state court independently, and
9 we have on our side Ninth Circuit law and on their side it's
10 not even contested that they should be in state court, and
11 defendants are just, in our view -- my view, taking an
12 opportunistic shot at trying to smash us together for their own
13 purpose, and that's really not the point of CAFA, which is --
14 the point of CAFA is not to allow the defendants to make hay
15 out of a momentary administrative issue in the state court and
16 try to pull us all into federal court a second time.

17 So if the Court were to deny remand, my intention would be
18 to refile in state court. I think --

19 **THE COURT:** To dismiss --

20 **MR. LAUGHLIN:** Yes. To dismiss my case here. I mean,
21 my view is they are the lead plaintiff, lead counsel here.
22 This is their case, and I don't want to be a part of it. They
23 don't want me to be a part of it. I want to pursue my separate
24 strategy.

25 And so if the Court were to deny remand, that would

1 actually be denying me my chance to do what I think is right
2 for the case and also would be denying me the opportunity to
3 represent the claims of all these people who are not in their
4 case. So we would be forced to go back -- to leave this case
5 and go back down to state court.

6 I haven't thought through every last contingency there,
7 but, I mean, that seems inefficient and wasteful and also might
8 raise some statute of limitations issues since the Securities
9 Act goes back three years on the reposed side. I would want to
10 keep my original Complaint as the start of my case.

11 So that's why we're pursuing the remand here. And if the
12 Court has any other questions on that point --

13 **THE COURT:** Okay.

14 I interrupted you while you were making your argument by
15 asking these questions. Anything else?

16 **MR. O'MARA:** No. That's okay, Your Honor. I'm happy
17 to respond to any points that Mr. Morrison brings up, but I
18 think we've been clear. Thank you.

19 **THE COURT:** Mr. Morrison?

20 **MR. MORRISON:** How are you, Your Honor?

21 **THE COURT:** I'm fine. Thank you.

22 **MR. MORRISON:** Let me start here. Plaintiff --
23 neither of them dispute that if the actions were validly
24 consolidated and they're viewed as merged into one pleading,
25 that there's CAFA jurisdiction. So what they do is they attack

1 the consolidation itself. They attack the effect of the
2 consolidation.

3 **THE COURT:** That would mean, though, that there were
4 both federal and state claims.

5 **MR. MORRISON:** Yes. So it is correct that the basis
6 of the removal is because now there both federal and state
7 claims together. California law is that when cases are
8 consolidated, you take both cases and merge them together.
9 That's California state law, and the court looks to California
10 state law with respect to consolidation.

11 Their entire position is built on this premise that
12 Judge Dubois didn't know what he was saying when he issued an
13 order. There is just no basis for that. There is the original
14 Consolidation Order that says what happens and then that --

15 **THE COURT:** But the original Consolidation Order also
16 says that the Consolidated Complaint applies to any further
17 actions filed.

18 **MR. MORRISON:** No. That's a -- it says that, but
19 it's -- let me explain. I'm going to address that, Your Honor.
20 I'm going to explain to you exactly what that means.

21 **THE COURT:** Okay.

22 **MR. MORRISON:** Okay. So the first order dealt with
23 consolidation of the Zakinov and Oconer cases.

24 **THE COURT:** Right.

25 **MR. MORRISON:** In there, what it said was, "When an

1 action is remanded back to this court, the parties shall bring
2 that remanded action to my attention for the purposes of moving
3 to consolidate the cases." Okay?

4 So the original order says the parties' obligation was to
5 bring it to his attention, which we did by a Notice of Related
6 Case. In a Notice of Related Case, we said there are
7 overlapping facts on law, there are similar claims, and it
8 serves judicial economy.

9 Nobody said a word. And by the functioning of the
10 original Consolidation Order, it was for the purpose of moving
11 to consolidate. And Judge Dubois got our Notice of Related
12 Case, found the case related, noted in his order -- this is the
13 second Consolidation Order -- that nobody objected and then
14 consolidated the cases together. Okay? That's exactly how the
15 order was designed to function. Okay?

16 Their position is he didn't mean what he said. What's the
17 basis of that? Other than their speculation, because they want
18 to forum shop. There is no basis --

19 **THE COURT:** Well, I'm not so sure that it's forum
20 shopping when they start off in state court, get removed
21 involuntarily to federal court, and then they try their best to
22 get back to state court.

23 **MR. MORRISON:** I'm going to address that, too, the
24 forum-shopping point because it's important, but let me finish
25 with the judge's orders.

1 So Judge Dubois knew exactly what he was doing. And so
2 now, having consolidated both cases, they now take the position
3 that by virtue of the original Consolidation Order, the
4 Greenwald action ceases to exist. It has been superseded by
5 the language of the order. Let -- and I would like to address
6 that.

7 What the order says -- and Your Honor is exactly right.
8 It says, "Plaintiffs are to either designate a Complaint as
9 operative or file a Consolidated Complaint within 45 days after
10 this order unless otherwise agreed upon by the parties. If
11 filed, the Consolidated Complaint shall be the operative
12 Complaint and shall supersede all Complaints filed in any of
13 the actions consolidated herein."

14 You're exactly right, the word "herein" -- there were only
15 two cases in front of him at the time, so what's being
16 superseded are the original Complaints in Zakinov and Oconer
17 that we no longer have to respond to because they filed a
18 Consolidated Complaint.

19 This doesn't say that it supersedes any case in the future
20 in perpetuity nor could it because if that was the intent, the
21 original Consolidation Order would essentially serve as a
22 perpetual motion to submit. Any time a related case is filed,
23 we move it over in front of Judge Dubois, and it automatically
24 becomes a dismissal. That's not what the order says.

25 The order talks about consolidation. It doesn't talk

1 about nullifying actions. And the language that plaintiffs
2 point to about the order applying to future cases being
3 remanded, of course it does because the idea of the entire
4 order was to get remanded cases or other cases in front of the
5 same judge to deal with them together. It nowhere says it's a
6 perpetual motion to dismiss. That wouldn't make any sense.

7 So their view of the order and this idea that it's a
8 nullity isn't borne out by the language of the state court
9 judge's order. And it's also based on the premise that he
10 didn't know what he was doing when he consolidated the cases.
11 There is just no evidence of that.

12 In fact -- and, you know -- and to prove the point, what
13 the Greenwald plaintiff just said is remarkable. First, the
14 Greenwald plaintiff takes the position that his entire case is
15 extinguished and doesn't exist and says on that basis, you have
16 to remand because there is only state law claims.

17 But then in the same exact breath says, *When I get back*
18 *down to state court, I'm going to seek to de-consolidate.*
19 De-consolidate what? He has just conceded his claims are
20 extinguished. He can't have it both ways.

21 Then the third thing that he says, Your Honor, is that, *If*
22 *it stays in federal court, I'm going to dismiss anyway and*
23 *refile.*

24 Does his case exist or not? If it doesn't exist, then
25 it's gone forever, and the only way to read Judge Dubois' order

1 is that it's a perpetual motion to dismiss order. Any related
2 case set in front of that judge is automatically superseded by
3 the language. There is no possible way that that's what the
4 judge meant in terms of his order, Your Honor, so that argument
5 doesn't work.

6 Now, with respect to the forum shopping point, plaintiffs
7 take the position that the policy of CAFA is to let them
8 control their own Complaint. That's 180-degrees backwards.
9 And we cite the cases in our papers, Your Honor. It's the
10 *Harbor View* case, and I'm quoting: "CAFA was created to expand
11 federal jurisdiction in class actions to address the gaming of
12 the system to avoid litigating in the federal courts." And
13 that, quote, "The fact that securities plaintiffs and their
14 counsel file successive actions addressing the same issues,"
15 which is exactly our case, "echo the repeated congressional
16 concerns about nationwide impact and abusive filings."

17 The entire purpose of CAFA is to get all of these related
18 cases into federal court in front of one judge. That's all we
19 want. We have never hidden that fact.

20 And the reason why I make the forum shopping point is,
21 remember, when I first appeared in front of Your Honor, it was
22 on the *Coffey* case. The *Coffey* case where you denied remand,
23 that involved 33 act claims and state law blue sky claims
24 altogether.

25 It was only after we removed that action that the

1 plaintiffs that are currently in front of the court suddenly
2 file separate piecemeal actions in state court, even though
3 every claim that they brought separately in state court was
4 already covered in *Coffey*.

5 CAFA was designed to prevent that very situation where
6 Ripple and the defendants are forced to litigate an action in
7 federal court and litigate duplicative actions in state court
8 because they filed them separately as opposed to together.

9 That's exactly what it's designed to prevent.

10 And so when the case gets consolidated and California law
11 treats those claims as married, you now have the *Coffey*
12 situation, federal claims and state claims, which makes the
13 case removable.

14 So the case currently in front of the Court is a marriage
15 of both of the actions. It satisfies all the requirements of
16 CAFA, and it is consist with the orders of Judge Dubois taken
17 at face value, which they must be. So there is no reason,
18 Your Honor, in those circumstances to remand the case.

19 Any questions so far, Your Honor?

20 **THE COURT:** No.

21 **MR. MORRISON:** Okay.

22 Would you like me to address the voluntarily/involuntary
23 piece?

24 **THE COURT:** No.

25 **MR. MORRISON:** Okay.

1 **THE COURT:** Is that it?

2 **MR. MORRISON:** That's it for right now, Your Honor.

3 **THE COURT:** Okay.

4 **MR. O'MARA:** I don't really have all that much to
5 follow up with, except that Mr. Morrison wants you to read
6 Judge Dubois' Consolidation Orders literally except when it
7 comes to the part about the operative Complaints superseding
8 all of the other Complaints that are consolidated.

9 I don't think there has been any forum shopping. We have
10 brought a limited California only class -- California state law
11 claims on behalf of a California class. Those should stay in
12 California state court.

13 Did you have anything?

14 **MR. LAUGHLIN:** Just very briefly, just a few couple
15 points.

16 One, I think it's very interesting that the Ripple --
17 counsel for Ripple cited this Court to the *Harbor View* case
18 because that is a case that is not the law of this circuit.
19 It's contrary to *Luther*. And it just goes to the same point
20 that what they are espousing is they're trying to re-litigate
21 the same issue, which they lost in front of this Court, which
22 is whether Greenwald was properly brought in state court.
23 That's point one.

24 And on the forum shopping point, I'll note that in the
25 *Coffey* transcript in oral argument, you addressed counsel for

1 Coffey, who is not affiliated with any of us, but you said, *Why*
2 *didn't you just bring Section 11 claims if you wanted to stay*
3 *in state court.* That's what you said. Because of course the
4 Court is familiar with the principle that CAFA does allow
5 plaintiffs to plead a claim and be the master of their own
6 Complaint, and in that way, affect CAFA jurisdiction.

7 Just on the point about how we interpret Judge Dubois, you
8 know, our point there -- there is two things that are
9 significant.

10 One, in paragraph 15 of the first Consolidation Order, it
11 references that a party who wants to consolidate should move
12 the court for an order consolidating such a case, make a
13 motion. A filing of a Notice of Related Action is not a
14 motion. California law requires a motion --

15 **THE COURT:** What are you referring to?

16 **MR. LAUGHLIN:** Paragraph 15.

17 **THE COURT:** Right.

18 **MR. LAUGHLIN:** It says, you know, in the middle of it,
19 the point of bringing the case -- the purpose -- I'm sorry.
20 I'm just going to read the whole thing.

21 "When a case which properly belongs as part of *In Re*
22 *Ripple Labs* lead case, 18 CIV 2845, is hereafter or has been
23 filed in" --

24 **THE COURT:** Slow, slow. Slow down.

25 **MR. LAUGHLIN:** Sorry.

1 "-- filed in, remanded to, or transferred to this Court,
2 counsel for the parties shall file -- shall call such filing,
3 remand, or transfer to the attention of the clerk of this --
4 the clerk of this court for purposes of moving the court for an
5 order consolidating such cases with *In Re Ripple Labs.*"

6 So a motion -- and that -- a motion was not made here.
7 California law generally requires a motion to consolidate. A
8 notice -- what was filed was simply one of these forms where
9 you check off a box that says "related." I did not interpret
10 that as a motion. I don't think it qualifies as a motion, and
11 there was no argument made. None of the facts were provided to
12 the court below or the state court. So I don't think it's
13 unreasonable to say that the court was not informed of the
14 significant disagreement --

15 **THE COURT:** Sure. But it says that "the parties shall
16 call the attention of the court," which they did by filing a
17 Notice of Related Case. And it -- the second clause, "for the
18 purpose of moving the court for an order consolidating the
19 case," well, they didn't have to do it because the court
20 consolidated it on his own motion.

21 **MR. LAUGHLIN:** Fair enough. But without -- that issue
22 was not addressed. The court was not provided with any facts,
23 and we did anticipate a motion, and I think this issue is even
24 particularly salient for us because we were not a party to this
25 stipulation, not apprised of its terms, and we did not agree to

1 any of these terms.

2 And, again, I just want to end by making the point that
3 Ripple's position is inherently contradictory in that they are
4 both seeking to avail themselves of background principles of
5 California law and then asking the Court to bend over backwards
6 and ignore other provisions, which doesn't really make sense to
7 me.

8 **THE COURT:** All right. Thank you.

9 All right. This is their motion. They get of the last
10 word. I don't have any additional questions.

11 I do find this a troublesome issue, for a number of
12 reasons. I have no idea how I'm going to come out of this.
13 I'll think about it. Your arguments have been somewhat
14 helpful.

15 But we have a situation where a state court judge has
16 entered an order. I'm not in the habit of reviewing the work
17 of state court judges and determining whether or not they were
18 right or they weren't or what they intended or what they
19 didn't, other than construing the written language of their
20 opinions and orders, which I will do and I will construe it to
21 the best of my ability, both of the provisions that we've
22 talked about -- all three of the provisions we've talked about
23 today.

24 But I also know that once I get a case, whether or not
25 it's from some other judge on my court, some judge on a state

1 court or back from the Ninth Circuit, it's my responsibility to
2 litigate the case going forward in the way that I think is
3 best. So I just tell you that in advance because you might be
4 surprised at what I ultimately decide to do in the case.

5 I do think that plaintiffs are masters of their own
6 Complaint. They can decide which forum they wish to be in.
7 And I do think that your removal was -- I won't use the word
8 "premature," but it was certainly precipitous in my view, given
9 that there really wasn't an opportunity for all the parties,
10 aside from that five-day period from the time that a motion --
11 I don't understand what happened in the state court. There is
12 the motion -- or a Notice of Related Case. I don't know during
13 that period of time whether or not the -- whether or not you
14 received notice of that so that you have an opportunity to
15 object to it.

16 I mean, the five days was pretty quick. I don't know how
17 you get this before the judge, but I would certainly feel more
18 comfortable about this had there been some sort of noticed
19 procedure and I knew that Judge Dubois' decision was purposeful
20 and intentional. I have no basis to believe that it was
21 oversight or that he didn't know what he was doing, but I don't
22 have a record. I don't have a record of exactly what the
23 reasoning was. And his short second order doesn't really
24 provide me much. So I find it troublesome.

25 Moreover, I know that I remanded this case over your

1 objections, and here you are back again. So on some level,
2 there is some strategic maneuvering that I think you're
3 attempting to do, and I think my chore now is to determine
4 whether or not I can let you get away with it, whether or not
5 it's an appropriate maneuver on your part. And I don't mean to
6 be pejorative. I mean, if you can do it, you can do it.

7 But this is not going to be an easy question for me.
8 Thank you for the arguments you've made today. And we'll let
9 you know in writing.

10 **MR. O'MARA:** Your Honor, two things.

11 One is I just want to respond to something you said about
12 the five-day period, and it's the *Abeyta* case that just deals
13 with stipulations, and then also there is a reference to the
14 *Schempp* case out of the District of Nevada that deals with,
15 like, failures to oppose motions. I won't make any argument on
16 that. I just wanted to point that out, that it addresses that.

17 And then also your comment about we should be prepared to
18 move forward and we might be surprised at how you work with
19 this case. There is a Case Management Conference Statement
20 that is due tomorrow in this case.

21 **THE COURT:** Okay.

22 **MR. O'MARA:** We've exchanged drafts. We have had one
23 phone call. I would ask --

24 **THE COURT:** You have a CMC next week?

25 **MR. O'MARA:** I don't know when the CMC is.

1 **MR. MORRISON:** I would have to look at the date. The
2 report is due tomorrow.

3 **MR. O'MARA:** So maybe 10 days from tomorrow.

4 **THE COURT:** The conference is usually the following
5 week.

6 **THE CLERK:** It's the 21st.

7 **THE COURT:** It's the 21st okay?

8 I'm going to vacate that so I can give myself a little
9 room to work through this.

10 **MR. O'MARA:** Thank you, Your Honor.

11 **THE COURT:** So the CMC is vacated. We will give you a
12 new date if the case is not remanded, and the deadline for
13 filing your Case Management Statement is seven days before the
14 conference.

15 **MR. O'MARA:** Thank you, Your Honor.

16 **MR. MORRISON:** Can I just address something really
17 quickly about your comment about us moving precipitously,
18 because I do understand, Your Honor, and I appreciate -- and I
19 don't take it in a pejorative manner, your view. I just want
20 to remind the Court that my clients also did not ask to be sued
21 in duplicative cases in state court when they were pending in
22 federal court.

23 And just to remind the Court, they didn't ask our
24 permission to be sued for the exact same issues in a different
25 venue because they preferred state court. And so to the extent

1 that you're looking at this as we want to be in federal court
2 in front of a single judge, yes, that's right. We think that's
3 the purpose of CAFA, but the idea that we are acting
4 precipitously when the whole reason we are here was their
5 decision to originally file duplicative matters in a different
6 jurisdiction, I'm troubled by -- I'm a little troubled that --
7 I want to make sure that there is an understanding that there
8 is two sides to a coin, I guess.

9 **THE COURT:** Well, there are certainly equities on both
10 sides --

11 **MR. MORRISON:** Okay. That's all.

12 **THE COURT:** -- and I believe that we have, in one of
13 our prior orders, talked about the intent behind CAFA and the
14 fact that this is an issue that is percolating all over the
15 country. There needs to be uniformity. It's the kind of case
16 that, in my view, should be in federal court in order to ensure
17 consistency.

18 But both of you are using what tools are available to you
19 to get to the forum that you wish. Plaintiffs like to be in
20 state court; defendants like to be in federal court. I mean,
21 you know, that's a given.

22 **MR. MORRISON:** That was my only point, Your Honor.

23 **THE COURT:** Yeah. That's a given. I understand that.
24 And I understand there are good reasons on -- good arguments to
25 be made by both sides. And I appreciate that there are

1 equities on both sides. Okay?

2 **MR. MORRISON:** Okay. Thank you very much.

3 **MR. O'MARA:** Thank you, Your Honor.

4 (Proceedings adjourned at 1:20 p.m.)

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3 CERTIFICATE OF REPORTER

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.

6
7 DATE: Tuesday, February 19, 2019

8
9 *Pamela Batalo Hebel*

10 Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter

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